

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL MCCARLEY,
Plaintiff,

3:11-CV-00441-BR
OPINION AND ORDER

v.

CAROLYN W. COLVIN,
Commissioner, Social Security
Administration,¹

Defendant.

STEVEN J. MUNSON
H. Peter Evans PC
610 S.W. Broadway
Suite 405
Portland, OR 97204
(503) 200-2718

Attorneys for Plaintiff

¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin should be substituted for Michael J. Astrue as Defendant in this case. No further action need be taken to continue this case by reason of the last sentence of Section 205(g) of the Social Security Act, 42 U.S.C. § 405.

S. AMANDA MARSHALL

United States Attorney

ADRIAN L. BROWN

Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204-2902
(503) 727-1003

DAVID MORADO

Regional Chief Counsel

FRANCO L. BECIA

Special Assistant United States Attorney
Social Security Administration
701 Fifth Avenue, Suite 2900, M/S 901
Seattle, WA 98104
(206) 615-2114

Attorneys for Defendants

BROWN, Judge.

This matter comes before the Court on Plaintiff's Motion for Authorization of Attorneys' Fees (#17) Pursuant to 42 U.S.C. § 406(b). For the following reasons, the Court **DENIES** Plaintiff's Motion with leave to renew upon a showing of good cause for the failure to file the Motion timely.

BACKGROUND

On April 4, 2011, Plaintiff filed a Complaint in which he sought judicial review of a final decision of the Commissioner of the Social Security Administration denying Plaintiff's application for Disability Insurance Benefits (DIB) under Title II of the Social Security Act.

On June 26, 2012, this Court issued an Opinion and Order

reversing the Commissioner's decision and remanding the matter for the calculation and award of benefits pursuant to sentence four of 42 U.S.C. § 405(g).

On September 2, 2012, the Social Security Administration (SSA) sent Plaintiff a Notice of Award.

On May 29, 2014, Plaintiff filed a Motion for Authorization of Attorney Fees pursuant to 42 U.S.C. § 406(b) in which he seeks \$7,164 in attorneys' fees for work performed in this matter before this Court.

DISCUSSION

Local Rule 4000-8 provides in pertinent part:

Plaintiff shall submit any application for attorneys' fees under 42 U.S.C. § 406(b) within 60 days after plaintiff's federal court attorney has received all of the Notices of Award which are necessary to calculate the total amount of retroactive benefits payable. An application submitted beyond the 60-day period will be deemed timely only upon a showing of good cause for the delay.

As noted, the SSA issued a Notice of Award to Plaintiff on September 2, 2012. Plaintiff did not file his Motion seeking attorneys' fees pursuant to § 406(b) until May 29, 2014. Accordingly, it appears on this record that Plaintiff's Motion seeking attorneys' fees is untimely pursuant to Rule 4000-8. The Court, therefore, denies Plaintiff's Motion. Nevertheless, the Court grants Plaintiff leave to show good cause for his failure

to request fees under § 406(b) for nearly two years after the SSA sent Plaintiff the Notice of Award.

CONCLUSION

For these reasons, the Court **DENIES** Motion for Authorization of Attorneys' Fees (#17) Pursuant to 42 U.S.C. § 406(b). The Court, however, **GRANTS** Plaintiff leave to show good cause for his failure to request attorneys' fees timely under § 406(b) and to renew his Motion **no later than August 26, 2014**.

IT IS SO ORDERED.

DATED this 6th day of August, 2014.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge